

# Queensland



## SUPREME COURT OF QUEENSLAND ACT 1991

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	
2	Commencement . . . . .	
3	Interpretation—general . . . . .	
4	Interpretation—meaning of appeal . . . . .	
5	Interpretation—references to Full Court etc. . . . .	
6	Interpretation—control and management of precincts . . . . .	
7	The Crown . . . . .	
<b>PART 2—THE COURT</b>		
<i>Division 1—Continuance, jurisdiction and composition</i>		
8	Continuance . . . . .	
9	Jurisdiction generally . . . . .	
10	Jurisdiction of Court not impaired etc. . . . .	
11	Existing Judges etc. . . . .	
12	Composition of Court . . . . .	
13	Title of Chief Justice . . . . .	
14	Acting Judges . . . . .	
15	Jurisdiction not affected by vacancies . . . . .	
<i>Division 2—Divisions of the Court</i>		
16	Divisions of Court etc. . . . .	
17	Further divisions of Trial Division . . . . .	
18	Matters to be heard and determined in Divisions of Trial Division . . . . .	

19 Transfer and retention . . . . .

20 Validity of proceedings in any Division of Trial Division . . . . .

***Division 3—Provisions relating to Judges generally***

21 Seniority . . . . .

22 Accepting and holding of other public offices . . . . .

23 Retirement of Judges . . . . .

24 Leave of absence . . . . .

25 Resignation . . . . .

26 Temporary judicial office holders . . . . .

27 Entitlements of temporary judicial office holders . . . . .

**PART 3—THE COURT OF APPEAL**

***Division 1—Composition, jurisdiction and powers***

28 Composition . . . . .

29 Jurisdiction and powers . . . . .

30 Way in which Court may be constituted . . . . .

31 Constitution of Court if one Judge of Appeal unable to continue . . . . .

32 Arrangement of business of Court of Appeal . . . . .

***Division 2—Judges of Appeal***

33 Appointment . . . . .

34 Judge of Appeal continues to be Judge . . . . .

35 Judge of Appeal continues in office while Judge . . . . .

36 Appointment of President . . . . .

37 President continues in office while Judge of Appeal . . . . .

38 Holding office as Chief Justice and President . . . . .

39 Additional Judges of Appeal . . . . .

40 Presiding Judge of Appeal . . . . .

41 Decision . . . . .

42 Reserved judgments . . . . .

43 Powers of Judge of Appeal . . . . .

44 Remuneration of Judges of Appeal . . . . .

45 Appropriation . . . . .

***Division 3—Management of the Court of Appeal***

46 Management of Court of Appeal . . . . .

47 Amounts appropriated for Court . . . . .

48 Estimates . . . . .

49 Precincts of Court of Appeal . . . . .

50 Staff of Court of Appeal . . . . .

51 Power of President to direct staff . . . . .

52 Proper accounts to be kept . . . . .

53 Audit . . . . .

54 Minister to be kept informed . . . . .

55 Annual report . . . . .

56 Delegation of powers of President . . . . .

57 Proceedings in relation to administration of Court . . . . .

**PART 4—THE TRIAL DIVISION**

***Division 1—Jurisdiction and powers***

58 Composition, jurisdiction and powers of Trial Division . . . . .

59 Single Judge to constitute the Court

***Division 2—Senior Judge Administrator, Senior Judges and other Judges***

60 Appointment of Senior Judge Administrator . . . . .

61 Senior Judge Administrator continues to be Judge . . . . .

62 Senior Judge Administrator continues in office while Judge . . . . .

63 Arrangement of business of Trial Division . . . . .

64 Assignment of Judges . . . . .

65 Appointment of Senior Judges . . . . .

66 Senior Judge continues to be Judge . . . . .

67 Senior Judge continues in office while Judge . . . . .

68 Precincts of Court in Trial Division . . . . .

69 Senior Judges to assist Senior Judge Administrator . . . . .

70 Delegation of powers of Senior Judge Administrator . . . . .

**PART 5—REMOVAL AND REMISSION**

71 Removal and remission . . . . .

**PART 6—APPEALS TO COURT OF APPEAL**

72 Appeal in proceedings in the Court . . . . .

73	Disqualification of Judge of Appeal . . . . .
<b>PART 7—LITIGATION REFORM COMMISSION</b>	
74	Establishment of Commission . . . . .
75	Function . . . . .
76	Powers . . . . .
77	Composition of Commission etc. . . . .
78	Allowances of members . . . . .
79	Chairperson of Commission . . . . .
80	Acting Chairperson . . . . .
81	Divisions of Commission . . . . .
82	Responsibilities and powers of Chairperson . . . . .
83	Times and places of meetings . . . . .
84	Presiding at meetings . . . . .
85	Quorum and voting at meetings . . . . .
86	Conduct of meetings . . . . .
87	Decisions without meetings . . . . .
88	Minutes . . . . .
89	Commission and Divisions may regulate their proceedings . . . . .
90	Obtaining information from units of public sector . . . . .
91	Premises and facilities of Commission . . . . .
92	Amounts appropriated for Commission . . . . .
93	Estimates . . . . .
94	Staff of Commission . . . . .
95	Proper accounts to be kept . . . . .
96	Audit . . . . .
97	Minister to be kept informed . . . . .
98	Annual report . . . . .
99	Delegation of powers of Chairperson . . . . .
100	Proceedings in relation to administration of Commission . . . . .

**PART 8—TRANSITIONAL PROVISIONS**

101 Seniority of first Judges of Appeal . . . . .

102 Judicial entitlements of first Judges of Appeal . . . . .

103 Part heard proceedings etc. . . . .

104 Existing rules of court . . . . .

105 Leave granted to appeal . . . . .

106 Previous appointments of acting Judges . . . . .

107 Court may resolve difficulties . . . . .

**PART 9—MISCELLANEOUS**

108 Order etc. on terms . . . . .

109 Regulations . . . . .

**PART 10—REPEALS AND AMENDMENTS**

110 Repeal of Acts . . . . .

111 Amendment of Acts . . . . .

SCHEDULE 1

REPEALED ACTS . . . . .

SCHEDULE 2

CONSEQUENTIAL AND OTHER AMENDMENTS . . . . .

# Queensland



## **Supreme Court of Queensland Act 1991**

### **Act No. 68 of 1991**

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**An Act relating to the Supreme Court of Queensland and the  
Litigation Reform Commission**

*[Assented to 24 October 1991]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Supreme Court of Queensland Act 1991*.

### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

### **Interpretation—general**

- 3.(1) In this Act—

**“authorised auditor”** means—

- (a) the Auditor-General; or
- (b) a person authorised, in writing, by the Auditor-General;

**“Chief Justice”** means the Chief Justice of Queensland;

**“Court”** means the Supreme Court of Queensland;

**“Commission”** means the Litigation Reform Commission;

**“Division”** means a Division of the Court;

**“Full Court”** means the Full Court of the Supreme Court, and includes the Supreme Court sitting as the Court of Criminal Appeal and the Court as a court consisting of 2 or more Judges;

**“Judge”** means a Judge of the Court;

**“Judge of Appeal”** includes the President of the Court of Appeal;

**“precincts”**—means

- (a) in relation to the Court of Appeal—any land or building, or the part of any land or building, declared under this Act to be the precincts, or a part of the precincts, of the Court of Appeal, and includes any

other land or building, or the part of any other land or building, used for the purposes of the Court of Appeal; and

(b) in relation to the Court in the Trial Division—any land or building, or the part of any land or building, declared under this Act to be the precincts, or a part of the precincts, of the Court in the Trial Division, and includes any other land or building, or the part of any other land or building, used for the purposes of the Court in the Trial Division;

**“President”** means the President of the Court of Appeal;

**“proceeding”** means a proceeding in a court (whether or not between parties), and includes—

(a) an incidental proceeding in the course of, or in connection with, a proceeding; and

(b) an appeal or stated case;

**“remuneration”** includes salary, pension, leave of absence (whether annual leave, long leave or leave on account of illness or otherwise) and any other allowance, benefit or entitlement in respect of judicial service, whether paid or provided to a Judge or his or her spouse, widow, widower, child or estate or otherwise;

**“rules”** means rules of court of the Court, and includes rules of court of the Court of Appeal, the Trial Division or a Division of the Trial Division;

**“stated case”** means—

(a) a case stated under an Act or the rules by the Court in the Trial Division or a Judge; or

(b) a case stated under an Act by another court or a judge of another court, or a justice or other person, for the opinion, decision, direction or determination of the Court;

**“this Act”** includes the rules.

(2) Unless the contrary intention appears, words and expressions used in the *Judicature Act* have the same respective meanings in this Act.



**Interpretation—meaning of appeal**

4. For the purposes of this Act, a proceeding in the Court under an Act—
- (a) is an appeal if described in that Act, or in any statutory rule made under that Act, as an appeal; and
  - (b) subject to the rules, is not an appeal if not so described.

**Interpretation—references to Full Court etc.**

5. In an Act (other than this Act) or the rules, unless the contrary intention appears, a reference to the Full Court or Court of Criminal Appeal is a reference to the Court of Appeal.

**Interpretation—control and management of precincts**

6. For the purposes of this Act, a power to control and manage the precincts of a Division of the Court includes all necessary and incidental powers, including power to obtain, grant, prohibit or limit access to and from the precincts or part of the precincts.

**The Crown**

7. The Crown in all its capacities is bound by, and has the benefit of, this Act.

**PART 2—THE COURT*****Division 1—Continuance, jurisdiction and composition*****Continuance**

8. The Supreme Court of Queensland, as formerly established as the superior court of record in Queensland, is continued in existence.

**Jurisdiction generally**

**9.(1)** The Court has all jurisdiction that is necessary for the administration of justice in Queensland.

**(2)** Without limiting subsection (1), the Court—

(a) is the supreme court of general jurisdiction in and for the State; and

(b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.

**Jurisdiction of Court not impaired etc.**

**10.** Except as provided in this Act, this Act does not take away, lessen or impair any jurisdiction or power that was, immediately before the commencement of this section, vested in or capable of being exercised by the Court or one or more Judges.

**Existing Judges etc.**

**11.** A person who, immediately before the commencement of this section, held office as Chief Justice, Judge, acting Judge or Master continues to hold the office, but does so subject to this Act.

**Composition of Court**

**12.** The Court consists of a Chief Justice, a President of the Court of Appeal, other Judges of Appeal, a Senior Judge Administrator, and such Senior Judges and Judges as are appointed by the Governor in Council.

**Title of Chief Justice**

**13.** The Chief Justice is called the Chief Justice of Queensland.

**Acting Judges**

**14.(1)** If a Judge is or will be on leave, or otherwise absent, or is or will be, for any reason, unable to perform the functions of the office, the Governor in Council, after consultation between the Minister and the Chief

Justice and Senior Judge Administrator, may, by commission, appoint a person who is qualified to be appointed as a Judge to act as a Judge for such period (not longer than 6 months) as is specified in the commission.

(2) If the Senior Judge Administrator, after consultation with the Chief Justice, certifies that it is desirable that one or more persons be appointed to act as a Judge to assist in ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court in the Trial Division, the Governor in Council may, by commission, appoint one or more persons, who is or are qualified to be appointed as a Judge to act as a Judge for such period (not longer than 6 months) as is specified in the commission or commissions.

(3) While a person is acting as a Judge—

- (a) the person has all the powers and functions of a Judge; and
- (b) this Act and other Acts apply to the person as if the person were a Judge.

(4) The Governor in Council may determine the remuneration to be paid and provided in relation to a person who acts as a Judge (not being less than the remuneration paid and provided to a Judge).

(5) The fact that a person who holds a commission to act as a Judge sits and otherwise acts as a Judge is sufficient evidence of the person's authority to do so.

(6) A person who has acted as a Judge may attend sittings of the Court for the purpose of giving judgment in, or otherwise completing, a proceeding that was heard by the person while the person was acting as a Judge, despite the fact that the person is no longer a Judge.

### **Jurisdiction not affected by vacancies**

15. The jurisdiction of the Court, or of a Division of the Court, is not affected by a vacancy in any office in the Court.

**Divisions of Court etc.**

**16.(1)** The Court is divided into—

- (a) the office of the Chief Justice; and
- (b) 2 Divisions, namely, the Court of Appeal and the Trial Division.

**(2)** The Chief Justice may sit as, and exercise the powers and perform the functions of, a Judge in either Division of the Court subject to arrangements made with the Judge responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court in the Division.

**Further divisions of Trial Division**

**17.** The Governor in Council may make regulations further dividing the Trial Division.

**Matters to be heard and determined in Divisions of Trial Division**

**18.(1)** If the Trial Division is further divided, the Governor in Council may make regulations with respect to the matters that are to be heard and determined in the various Divisions of the Trial Division.

**(2)** Subject to any regulations made for the purposes of subsection (1), the rules of court of the Court may make provision with respect to the matters that are to be heard and determined in the various Divisions of the Trial Division.

**Transfer and retention**

**19.(1)** The Court in a Division of the Trial Division may, on application by a party or of its own motion, order that the whole or a part of a proceeding in the Division be transferred to another Division of the Trial Division.

**(2)** A proceeding may be retained in a Division of the Trial Division even though the proceeding is, under the regulations and rules, required to be heard and determined in another Division of the Trial Division.

**Validity of proceedings in any Division of Trial Division**

**20.** A step taken, order made, judgment given or other thing done in a proceeding in a Division of the Trial Division is as valid in every way as it would be if taken, made, given or done in the Division of the Trial Division in which the proceeding is, under the regulations and rules, required to be heard and determined.

***Division 3—Provisions relating to Judges generally*****Seniority**

**21.(1)** The Chief Justice is senior to all other Judges of the Court.

**(2)** The President of the Court of Appeal is senior to all other Judges of the Court apart from the Chief Justice.

**(3)** Subject to section 101 (Seniority of first Judges of Appeal), Judges of Appeal have seniority after the President of the Court of Appeal, and have seniority in relation to each other according to the dates of their commissions as Judges of Appeal.

**(4)** Subject to section 101 (Seniority of first Judges of Appeal), if the commissions of 2 or more Judges of Appeal have the same date, the Judges of Appeal have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.

**(5)** The Senior Judge Administrator has seniority after the Judges of Appeal.

**(6)** The Senior Judges have seniority after the Senior Judge Administrator, and have seniority in relation to each other according to the dates of their commissions as Senior Judges.

**(7)** If the commissions of 2 or more Senior Judges have the same date, the Senior Judges have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.

**(8)** The remaining Judges have seniority in relation to each other according to the dates of their commissions.

(9) If the commissions of 2 or more Judges have the same date, the Judges have seniority in relation to each other according to the seniority assigned by their commissions or, in the absence of such an assignment, according to the order of their being sworn in.

(10) In subsections (8) and (9), a reference to a Judge includes a Judge who has ceased to be the Senior Judge Administrator or a Senior Judge.

### **Accepting and holding of other public offices**

22.(1) Subject to this section, a Judge may accept and hold another public office.

(2) A Judge who accepts another public office—

(a) must immediately notify the Attorney-General in writing; and

(b) must immediately resign the other public office if the Governor in Council determines, after consultation between the Attorney-General and the Chief Justice, that the holding of that office would be inconsistent with the proper discharge of the office of a Judge.

(3) A Judge may receive remuneration in relation to the acceptance or holding of another public office only with the approval of the Governor in Council.

(4) In this section—

“**public office**” includes—

(a) an office or appointment granted or made by the Government of the Commonwealth, another State or a Territory; and

(b) an office or appointment in or in relation to a university or other educational institution, a hospital or a charitable institution.

### **Retirement of Judges**

23.(1) A Judge must retire on reaching 70 years of age.

(2) Despite subsection (1), a Judge who, before attaining 70 years of age, starts the hearing of a proceeding remains a Judge for the purposes of finishing the proceeding.

(3) Subsection (2) does not prevent the filling of the Judge’s office from

any time after the Judge attains 70 years of age and, for that purpose, the Judge's office is taken to be vacant from that time.

### **Leave of absence**

**24.** The Governor in Council may grant leave of absence to a Judge.

### **Resignation**

**25.** A Judge may resign a judicial office by signed notice given to the Governor.

### **Temporary judicial office holders**

**26.(1)** When—

- (a) the office of Chief Justice, President of the Court of Appeal or Senior Judge Administrator is vacant; or
- (b) the Chief Justice, the President of the Court of Appeal or the Senior Judge Administrator is, for any reason, unable to discharge the person's office;

the next most senior Judge, who is willing, is to act in the office.

**(2)** When the Chief Justice, the President of the Court of Appeal or the Senior Judge Administrator is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the person's office, the next most senior Judge, who is willing, is to perform the functions of the office that the person is unable to perform.

**(3)** When—

- (a) the office of a Senior Judge of a Division of the Trial Division is vacant; or
- (b) a Senior Judge is, for any reason, unable to discharge the office;

the next most senior Judge, who is assigned to the Division of the Trial Division and is willing, is to act in the office.

**(4)** When a Senior Judge of a Division of the Trial Division is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the office, the next most senior Judge, who is

assigned to the Division of the Trial Division and is willing, is to perform the functions of the office that the person is unable to perform.

(5) While a Judge is acting in a more senior judicial office—

- (a) the Judge has all the powers and functions of the office; and
- (b) this Act and other Acts apply to the Judge as if the Judge were the holder of the office.

(6) While a Judge is performing functions of a more senior judicial office, then, to the extent necessary to enable the person to perform the functions—

- (a) the Judge has all the powers and functions of the office; and
- (b) this Act and other Acts apply to the Judge as if the Judge were the holder of the office.

(7) The fact that a Judge acts in, or performs functions of, a more senior judicial office is sufficient evidence of the Judge's authority to do so.

(8) Anything done by a Judge in purporting to act in, or perform functions of, a more senior judicial office is not invalid merely because the occasion for the Judge to act in, or perform functions of, the office had not arisen or had ceased.

### **Entitlements of temporary judicial office holders**

**27.(1)** Subject to subsection (2), a Judge who acts in, or performs functions of, a more senior judicial office under section 26 (Temporary judicial officer holders) or section 39 (Additional Judges of Appeal) is not entitled to receive additional remuneration for doing so.

(2) The Governor in Council may determine that a Judge who acts in, or performs functions of, a more senior judicial office under section 26 (Temporary judicial office holders) or section 39 (Additional Judges of Appeal) is to receive specified additional remuneration (not being more than the remuneration of the office concerned) for doing so.

## **PART 3—THE COURT OF APPEAL**



***Division 1—Composition, jurisdiction and powers*****Composition**

**28.** The Court of Appeal consists of—

- (a) the President of the Court of Appeal; and
- (b) not less than 3, nor more than 5, other Judges of Appeal.

**Jurisdiction and powers**

**29.(1)** Subject to this Act, the Court of Appeal has jurisdiction to hear and determine all matters that, immediately before the commencement of this section, the Full Court had jurisdiction to hear and determine.

**(2)** The Court of Appeal has such additional jurisdiction as is conferred on it by or under this Act, another Act or a Commonwealth Act.

**(3)** The Court of Appeal may, in proceedings before it, exercise every jurisdiction or power of the Court, whether at law or in equity or under any Act, Commonwealth Act or Imperial Act.

**Way in which Court may be constituted**

**30.(1)** Subject to this Act, any 3 or more Judges of Appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.

**(2)** More than one Court of Appeal may sit at the same time.

**(3)** When more than one Court of Appeal is sitting at the same time, each may exercise the jurisdiction and powers of the Court of Appeal.

**(4)** The rules may provide that the jurisdiction and powers of the Court of Appeal may, in particular kinds of proceedings, be exercised by fewer than 3 Judges of Appeal.

**Constitution of Court if one Judge of Appeal unable to continue**

**31.(1)** If—

- (a) after the Court of Appeal (including the Court constituted under this section) has started the hearing, or further hearing, of a proceeding;

and

(b) before the proceeding has been determined;

one of the Judges of Appeal constituting the Court dies, resigns as a Judge or otherwise becomes unable to continue as a member of the Court for the purposes of the proceeding, the hearing and determination of the proceeding may be finished by the remaining Judges of Appeal if at least 2 Judges of Appeal remain and the parties consent.

(2) The Court of Appeal constituted under this section may have regard to any evidence given or received, and arguments adduced, by or before the Court of Appeal as previously constituted.

(3) Any question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal constituted under this section has the same force and effect, as if the Court were not constituted under this section.

### **Arrangement of business of Court of Appeal**

**32.(1)** The President of the Court of Appeal is responsible for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal.

(2) Subject to this Act and to such consultation with the Chief Justice and the Judges of Appeal as the President considers appropriate and practicable, the President has power to do all things necessary or convenient to be done for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court of Appeal, including, for example—

(a) determining the Judges who are to constitute the Court of Appeal in particular proceedings; and

(b) making rules of court with respect to the practices and procedures of the Court of Appeal; and

(c) issuing directions with respect to the practices and procedures of the Court of Appeal.

(3) Before making a rule of court or issuing a direction under subsection (2), the President of the Court of Appeal must notify the proposed rule or direction—

(a) to the other Judges of Appeal (except those Judges of Appeal

who are absent from duty or otherwise unavailable); and

(b) to the Minister or as the Governor in Council otherwise directs.

(4) The President of the Court of Appeal must not make the rule of court, or issue the direction, if—

(a) a majority of the Judges of Appeal (including the President) are opposed; or

(b) within 14 days after the rule or direction is notified as required by subsection (3)(b), the Minister notifies the President, in writing, that the Governor in Council objects to the rule or direction.

(5) A rule of court made under this section must be published in the Gazette.

### *Division 2—Judges of Appeal*

#### **Appointment**

33.(1) The Governor in Council may, by commission, appoint a Judge to be a Judge of Appeal.

(2) A Judge may be appointed to be a Judge of Appeal either at the time of the person's appointment as a Judge or at any time afterwards.

#### **Judge of Appeal continues to be Judge**

34. A Judge of Appeal continues to be a Judge, and may, with the consent of the President of the Court of Appeal, sit as, and exercise any of the powers of, a Judge in any other Division of the Court.

#### **Judge of Appeal continues in office while Judge**

35.(1) A Judge of Appeal holds office as a Judge of Appeal while the person holds office as a Judge.

(2) A Judge of Appeal may resign office as a Judge of Appeal without resigning office as a Judge.

**Appointment of President**

**36.(1)** The Governor in Council may, by commission, appoint a Judge of Appeal to be the President of the Court of Appeal.

**(2)** A Judge of Appeal may be appointed to the President of the Court of Appeal either at the time of the person's appointment as a Judge of Appeal or at any time afterwards.

**President continues in office while Judge of Appeal**

**37.(1)** The President of the Court of Appeal holds office as President while the person holds office as a Judge of Appeal.

**(2)** The President may resign office as President without resigning office as a Judge of Appeal.

**Holding office as Chief Justice and President**

**38.(1)** A person may hold office as Chief Justice and President of the Court of Appeal.

**(2)** A person who holds office as Chief Justice and President of the Court of Appeal may resign either of the offices without resigning the other.

**Additional Judges of Appeal**

**39.(1)** If a Judge of Appeal is on leave, or otherwise absent, or is, for any reason, unable to perform the functions of the office, the Governor in Council, after consultation between the Minister and the Chief Justice and President of the Court of Appeal, may, by commission, appoint a Judge to act as an additional Judge of Appeal for such period (not longer than 6 months) as is specified in the commission.

**(2)** If the President of the Court of Appeal requests that a Judge nominated by the Senior Judge Administrator act as an additional Judge of Appeal during a particular period and the Judge is willing to act during the period, the Judge may act as an additional Judge of Appeal during the period.

**(3)** If—

(a) the President of the Court of Appeal considers, after consultation

with the Senior Judge Administrator, that it is expedient that a specified Judge should act as an additional Judge of Appeal in a specified proceeding before the Court of Appeal; and

(b) the Judge is willing to act as an additional Judge of Appeal in the proceeding;

the Judge may act as an additional Judge of Appeal for the purposes of the proceeding.

(4) While a Judge is acting as a Judge of Appeal—

(a) the Judge has all the powers and functions of a Judge of Appeal; and

(b) this Act and other Acts apply to the Judge as if the Judge were a Judge of Appeal.

(5) The fact that a Judge sits and otherwise acts as an additional Judge of Appeal is sufficient evidence of the Judge's authority to do so.

(6) Anything done by or in relation to a Judge while the Judge is purporting to act as Judge of Appeal is not invalid merely because the occasion for the Judge to act had not arisen or had ceased.

(7) A Judge who has acted as an additional Judge of Appeal may attend sittings of the Court of Appeal for the purpose of giving judgment in, or otherwise completing, a proceeding that was heard by the Court of Appeal while the Judge was acting, despite the fact that the Judge is no longer a Judge of Appeal.

### **Presiding Judge of Appeal**

**40.(1)** At a sitting of the Court of Appeal at which the Chief Justice is present, the Chief Justice is to preside.

(2) At a sitting of the Court of Appeal at which the Chief Justice is not present, the President of the Court of Appeal is to preside.

(3) At a sitting of the Court of Appeal at which neither the Chief Justice nor the President of the Court of Appeal is present, the senior Judge of Appeal present is to preside.

**Decision**

**41.(1)** The decision of the Court of Appeal is to be in accordance with the opinion of the majority of Judges of Appeal present at the hearing.

**(2)** If the Judges of Appeal present are equally divided in opinion, the decision of the Court of Appeal is to be in accordance with the opinion of the Judge who is presiding at the hearing.

**Reserved judgments**

**42.(1)** If a proceeding is set down for judgment, it is not necessary for all or any of the Judges of Appeal before whom it was heard to be present in court to state their opinions on the proceeding when the judgment is obtained.

**(2)** The opinion of any of the Judges of Appeal may be reduced to writing and may be made public by any Judge of Appeal at a sitting of the Court of Appeal at which judgment in the proceeding is delivered.

**(3)** A question in the proceeding is to be decided in the same way, and the judgment of the Court of Appeal has the same effect, as if each Judge of Appeal whose opinion is so made public had been present in court and declared his or her opinion in person.

**(4)** For the purpose of delivering judgment under this section, the Court of Appeal may be constituted by a single Judge of Appeal who need not have been present at the hearing.

**Powers of Judge of Appeal**

**43.(1)** A Judge of Appeal may exercise the powers of the Court of Appeal—

- (a) to give a judgment by consent or make an order by consent; and
- (b) to dismiss an appeal or other proceeding for want of prosecution or for other cause specified in an Act or the rules; and
- (c) to dismiss an appeal or other proceeding on the application of the appellant, applicant or plaintiff; and
- (d) to deal with matters incidental to the matters mentioned in

paragraphs (a), (b) and (c).

(2) A Judge of Appeal may exercise the powers of the Court of Appeal—

(a) to make an order or give a direction concerning the institution of an appeal or other proceeding in the Court of Appeal; or

(b) to make an order or give a direction in an appeal or other proceeding, other than an order or direction involving the determination or decision of the appeal or other proceeding.

(3) Subsection (2) does not limit the powers that a Judge of Appeal may exercise under subsection (1).

(4) The Court of Appeal may discharge or vary—

(a) a judgment given by a Judge of Appeal; or

(b) an order made or direction given by a Judge of Appeal.

(5) Subject to subsection (4), a judgment, order or direction given or made by a Judge of Appeal has effect as a judgment, order or direction of the Court of Appeal, whether or not the judgment, order or direction is within the powers of the Judge of Appeal under this section.

### **Remuneration of Judges of Appeal**

44. Subject to this Act, the salary, allowances and other remuneration of the President of the Court of Appeal and the other Judges of Appeal is to be determined, paid and provided in accordance with—

(a) section 17 of the *Constitution Act 1867*; and

(b) section 10 of the *Supreme Court Act 1867*; and

(c) section 6 of the *Supreme Court Act 1874*; and

(d) the *Judges (Pensions and Long Leave Act )1957*; and

(e) the *Judges (Salaries and Allowances) Act 1967*.

### **Appropriation**

45. Amounts payable in accordance with section 44 (Remuneration of Judges of Appeal) are payable out of the Consolidated Fund, which is

appropriated accordingly.

### ***Division 3—Management of the Court of Appeal***

#### **Management of Court of Appeal**

**46.(1)** The President of the Court of Appeal is responsible for the administration of the Court of Appeal.

**(2)** The President of the Court of Appeal has power to do all things that are necessary or convenient to be done for or in connection with the administration of the Court of Appeal, including, for example—

- (a) controlling and managing the precincts of the Court of Appeal; and
- (b) selecting the staff of the Court of Appeal (other than the associates of the other Judges of Appeal); and
- (c) engaging, on behalf of the State, consultants for the purposes of the Court of Appeal on such terms and conditions as the President determines.

**(3)** Until the first President of the Court of Appeal is appointed, the Minister is to control and manage the precincts of the Court of Appeal.

#### **Amounts appropriated for Court**

**47.** There are payable for the purposes of the Court of Appeal such amounts as are appropriated by the Parliament.

#### **Estimates**

**48.(1)** Estimates of receipts and expenditure in relation to the Court of Appeal must be submitted to the Minister after they have been approved by the President of the Court of Appeal.

**(2)** The estimates are to be in a form approved, in writing, by the Minister.



**Precincts of Court of Appeal**

**49.** The Governor in Council may, by order in council, declare any land or building, or a part of any land or building, to be the precincts, or a part of the precincts, of the Court of Appeal.

**Staff of Court of Appeal**

**50.(1)** Subject to this Act, the staff of the Court of Appeal are to be appointed or employed under the *Public Service Management and Employment Act 1988*.

**(2)** Subsection (1) does not apply to a person who is employed as an associate of a Judge.

**Power of President to direct staff**

**51.** The staff of the Court of Appeal (other than the associates of the other Judges of Appeal) must perform their duties in accordance with any directions of the President of the Court of Appeal.

**Proper accounts to be kept**

**52.(1)** Proper accounts and records relating to the administration of the Court of Appeal must be kept.

**(2)** All payments made out of amounts appropriated by the Parliament for the purposes of the Court of Appeal must be correctly made and properly authorised.

**Audit**

**53.(1)** The Auditor-General must—

- (a) inspect and audit the accounts and records of financial transactions relating to the administration of the Court of Appeal; and
- (b) immediately draw the President's attention to any irregularity disclosed by the inspection and audit that, in the Auditor-General's opinion, is of sufficient importance to justify doing so.

(2) The Auditor-General may dispense with all or part of the detailed inspection and audit of any accounts and records mentioned in subsection (1)(a).

(3) The Auditor-General must report to the President of the Court of Appeal the results of each inspection and audit carried out under subsection (1)(a).

(4) An authorised auditor is entitled, at all reasonable times, to full and free access to all accounts, records and other documents maintained under this Division and relating directly or indirectly to the receipt or payment of amounts.

(5) An authorised auditor may make copies of, or take extracts from, any accounts, records or other documents mentioned in subsection (4).

### **Minister to be kept informed**

54. The Minister must be given such reports and information relating to the administration of the Court of Appeal as are required to keep the Minister properly informed.

### **Annual report**

55.(1) As soon as practicable after the end of each financial year, but not later than 3 months after the end of the financial year, a written report of the administration of the Court of Appeal during the year must be prepared and given to the Minister, together with financial statements for the year and a copy of the Auditor-General's report under subsection (3) on the financial statements.

(2) The financial statements must be in a form approved by the Minister.

(3) Before the financial statements are submitted to the Minister, they must be submitted to the Auditor-General who must report to the President of the Court of Appeal—

(a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records; and

(b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and affairs relating to the Court of Appeal; and

(c) whether, in the Auditor-General's opinion, the receipt and expenditure of amounts, and the acquisition and disposal of assets, under this Division during the year have been in accordance with law; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Minister must cause a copy of the report and financial statements, together with a copy of the Auditor-General's report, to be laid before the Legislative Assembly within 14 days after their receipt by the Minister.

(5) If, at the time the Minister would otherwise be required to lay a copy of those documents before the Legislative Assembly, the Legislative Assembly is not sitting, the Minister must give a copy of the documents to the Clerk of the Parliament.

(6) The Clerk must cause a copy of the documents to be laid before the Legislative Assembly on its next sitting day.

(7) For the purposes of their printing and publication, the documents are taken to have been laid before the Legislative Assembly, and to have been ordered printed by the Legislative Assembly, when they are given to the Clerk.

### **Delegation of powers of President**

56. The President of the Court of Appeal may delegate all or any of the President's powers under this Division to—

- (a) any one or more of the Judges of Appeal; or
- (b) any one or more members of the staff of the Court of Appeal.

### **Proceedings in relation to administration of Court**

57. A judicial or other proceeding relating to a matter arising out of this Division may be instituted by or against the State, as the case requires.

## **PART 4—THE TRIAL DIVISION**

### *Division 1—Jurisdiction and powers*

#### **Composition, jurisdiction and powers of Trial Division**

**58.(1)** The Trial Division of the Court consists of the Judges of the Court other than the Chief Justice, the President of the Court of Appeal and the other Judges of Appeal.

**(2)** The jurisdiction and powers of the Court that are not required to be exercised by the Court of Appeal are to be exercised by the Court in the Trial Division.

#### **Single Judge to constitute the Court**

**59.(1)** All proceedings in the Trial Division are to be heard and disposed of before a single Judge.

**(2)** For those proceedings, the Judge constitutes, and is to exercise all the jurisdiction and powers of, the Court.

**(3)** This section does not affect the hearing and disposal of proceedings before a Master or other officer of the Court in accordance with an Act or the rules.

**(4)** This section does not affect any right to trial by jury under an Act, the rules or a practice of the Court.

### *Division 2—Senior Judge Administrator, Senior Judges and other Judges*

#### **Appointment of Senior Judge Administrator**

**60.(1)** The office of Senior Puisne Judge is renamed Senior Judge Administrator.

(2) The Governor in Council may, by commission, appoint a Judge to be Senior Judge Administrator.

(3) The appointment of a Senior Judge Administrator may be for a term (not less than 5 years) specified in the commission.

(4) A Judge may be appointed Senior Judge Administrator either at the time of the person's appointment as a Judge or at any time afterwards.

### **Senior Judge Administrator continues to be Judge**

61. The Senior Judge Administrator continues to be a Judge, and may sit as, and exercise any of the powers of, a Judge.

### **Senior Judge Administrator continues in office while Judge**

62.(1) Subject to subsection (2), the Senior Judge Administrator holds office as Senior Judge Administrator while the person holds office as a Judge.

(2) A person who is the Senior Judge Administrator vacates the office—

(a) if the person is appointed as Chief Justice, President of the Court of Appeal or another Judge of Appeal; or

(b) if the person was appointed as Senior Judge Administrator for a specified term—when the term ends.

(3) The Senior Judge Administrator may resign office as Senior Judge Administrator without resigning office as a Judge.

### **Arrangement of business of Trial Division**

63.(1) The Senior Judge Administrator is responsible to the Chief Justice for the administration of the Court in the Trial Division and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court in the Trial Division.

(2) Subject to this Act and other Acts and to consultation with the Chief Justice, the Senior Judge Administrator has power to do all things necessary or convenient to be done for the administration of the Court in the Trial Division and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the Court in the Trial Division, including, for

example—

- (a) making arrangements as to the Judges who are to constitute the Court in the Trial Division in particular matters; and
- (b) issuing directions with respect to the practices and procedures of the Court in the Trial Division; and
- (c) controlling and managing the precincts of the Court in the Trial Division.

(3) Regulations may be made with respect to the control and management of the precincts of the Court in the Trial Division.

(4) Regulations made for the purposes of subsection (3) may be made only before, and have effect only until, the first Senior Judge Administrator is appointed.

### **Assignment of Judges**

**64.(1)** If the Trial Division is further divided, the Governor in Council, after consultation between the Minister and the Chief Justice and Senior Judge Administrator, may, in the commission of appointment of a Judge or, with the consent of the Judge, at a later time, assign the Judge to a Division of the Trial Division.

(2) The assignment of a Judge to a particular Division of the Trial Division may be for a term specified in the commission or instrument of assignment.

(3) A Judge who is not assigned to a particular Division of the Trial Division may take part in the exercise of the jurisdiction of the Court in any Division of the Trial Division.

(4) Subject to subsection (5), a Judge who is assigned to a Division of the Trial Division may take part in the exercise of the jurisdiction of the Court in that Division of the Trial Division only.

(5) If—

- (a) the Senior Judge Administrator determines that it is expedient that a specified Judge who is assigned to a particular Division of the Trial Division should take part in the exercise of the jurisdiction of the Court in another Division; and

- (b) the Senior Judge of the Division to which the Judge is assigned and the Judge consent;

the Judge may take part in the exercise of the jurisdiction of the Court in the other Division.

### **Appointment of Senior Judges**

**65.(1)** If the Trial Division is further divided, the Governor in Council, after consultation between the Minister and the Chief Justice and Senior Judge Administrator, may, by commission, appoint a Judge to be the Senior Judge of a Division of the Trial Division.

(2) The appointment of a Senior Judge may be made for a term specified in the commission.

(3) A Judge may be appointed Senior Judge either at the time of the person's appointment as a Judge or at any time afterwards.

### **Senior Judge continues to be Judge**

**66.** A Senior Judge continues to be a Judge, and may sit as, and exercise any of the powers of, a Judge.

### **Senior Judge continues in office while Judge**

**67.(1)** Subject to subsection (2), a Senior Judge holds office as Senior Judge while the person holds office as a Judge.

(2) A person who is a Senior Judge vacates the office—

(a) if the person is appointed as Chief Justice, President of the Court of Appeal, Judge of Appeal or Senior Judge Administrator; or

(b) if the person was appointed as Senior Judge for a specified term—when the term ends.

(3) A Senior Judge may resign office as Senior Judge without resigning office as a Judge.

**Precincts of Court in Trial Division**

**68.** The Governor in Council may, by order in council, declare that any land or building, or a part of any land or building, is to be the precincts, or a part of the precincts, of the Court in the Trial Division.

**Senior Judges to assist Senior Judge Administrator**

**69.** If the Trial Division is further divided, the Senior Judges are to assist the Senior Judge Administrator in the discharge of the Senior Judge Administrator's functions.

**Delegation of powers of Senior Judge Administrator**

**70.** The Senior Judge Administrator may, after consultation with the Chief Justice, delegate all or any of the Senior Judge Administrator's powers under this Act to any one or more of the Senior Judges or, if there are no Senior Judges appointed, any one or more of the Judges.

**PART 5—REMOVAL AND REMISSION****Removal and remission**

**71.(1)** If a proceeding is started in the Trial Division, but is a proceeding that the Court of Appeal is required to hear and determine—

- (a) the proceeding is taken to have been duly started when it was started in the Trial Division; and
- (b) the Court of Appeal may, on application by a party or of its own motion, order that the proceeding be removed into the Court of Appeal; and
- (c) on an order being made under paragraph (b), the proceeding must be continued and disposed of in the Court of Appeal; and
- (d) subject to any order under paragraph (b), the proceeding may be continued and disposed of in the Trial Division.



(2) If a proceeding is started in the Court of Appeal, but is a proceeding that the Court of Appeal considers could be more conveniently heard and determined in the Trial Division—

- (a) the proceeding is taken to have been duly started when it was started in the Court of Appeal; and
- (b) the Court of Appeal may, on application by a party or of its own motion, order that the proceeding be remitted to the Trial Division; and
- (c) on an order for remission being made under paragraph (b), the proceeding must be continued and disposed of in the Trial Division; and
- (d) subject to any order under paragraph (b), the proceeding may be continued and disposed of in the Court of Appeal.

(3) If a proceeding is pending before the Court of Appeal, the Court of Appeal may, on application by a party or of its own motion, order that the whole or a part of the proceeding be remitted to the Trial Division for the determination (by trial or otherwise) of the proceeding or any question of fact or law arising in the proceeding.

(4) Subject to section 72 (Appeal in proceedings in the Court), the Court of Appeal may accept any determination of the Trial Division in whole or part.

(5) If a proceeding (whether by way of appeal or otherwise) under an Act other than this Act, or a proceeding on a stated case (other than a case stated by the Trial Division), is started in the Trial Division—

- (a) the Court of Appeal, if satisfied that special circumstances exist that make it desirable to do so, may, on application by a party or of its own motion, order that the proceeding be removed into the Court of Appeal; and
- (b) on an order being made under paragraph (a), the proceeding must be continued and disposed of in the Court of Appeal.

(6) A proceeding may be removed into the Court of Appeal under this section despite any decision or determination in the proceeding being expressed by an Act to be final or without appeal.

(7) If the Trial Division is further divided, an order for remission under this section may specify the Division of the Trial Division to which the

whole or part of the proceeding concerned, or the question concerned, is remitted.

## **PART 6—APPEALS TO COURT OF APPEAL**

### **Appeal in proceedings in the Court**

**72.(1)** Subject to this and any other Act, an appeal lies to the Court of Appeal from—

- (a) any judgment or order of the Court in the Trial Division; and
- (b) without limiting paragraph (a)—
  - (i) a judgment or order of the Court in the Trial Division made under this Act; and
  - (ii) any opinion, decision, direction or determination of the Court in the Trial Division on a stated case; and
  - (iii) any determination of the Court in the Trial Division in a proceeding remitted under section 71 (Removal and remission).

**(2)** Subject to any other Act, the rules of court may provide that leave to appeal is required in proceedings specified in the rules.

### **Disqualification of Judge of Appeal**

**73.** A Judge must not sit in judgment on the hearing of an appeal from a judgment given, or an order made, by the Judge.

## **PART 7—LITIGATION REFORM COMMISSION**

### **Establishment of Commission**

**74.** A Commission called the Litigation Reform Commission is established.

**Function**

**75.(1)** The function of the Commission is to make reports and recommendations with respect to—

- (a) the structure of the court system of Queensland; and
- (b) court practices and procedures (including the laws of evidence); and
- (c) the administration of the courts of Queensland; and
- (d) the simplification and modernisation of—
  - (i) Acts and statutory rules relating to matters mentioned in paragraphs (a), (b) and (c); and
  - (ii) the common law; and
- (e) such other matters are referred to it, from time to time, by the Minister.

**(2)** A report of the Commission, or a Division of the Commission, may deal with a matter mentioned in subsection (1)(a) to (e) or any aspect of the matter.

**(3)** The reports of the Commission and Divisions of the Commission are to be made to the Minister or as the Governor in Council otherwise directs.

**(4)** Before a report of the Commission or a Division of the Commission is made, the Chairperson of the Commission must consult with the Chief Justice unless the Chief Justice is absent from duty or otherwise unavailable.

**(5)** Unless the Governor in Council otherwise directs by written notice given to the Chairperson of the Commission, a report and recommendation from the Commission, or a Division of the Commission, is to be obtained before any other action is taken concerning any of the matters mentioned in subsection (1)(a), (b), (c), (d)(i) and (e).

**(6)** Without limiting subsection (5), rules of court may not be made under an Act other than this Act, and a regulation may not be made under this Act, unless a report and recommendation from the Commission, or a Division of the Commission, has been obtained on the matter.

**(7)** In this section—

**“court”** includes all courts and tribunals established by or under an Act that

are constituted or presided over by a Judge, Magistrate or other judicial officer.

### **Powers**

**76.(1)** The Commission has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting subsection (1), the Commission has such powers as are conferred on it by or under this Act.

### **Composition of Commission etc.**

**77.(1)** Subject to subsection (2), the Commission consists of the following members—

(a) the President of the Court of Appeal and the other Judges of Appeal; and

(b) such additional members as the Chairperson of the Commission appoints to the Commission, or a particular Division of the Commission, for a particular period or purpose.

**(2)** A member of the Commission may, by signed notice given to the Governor, resign as a member of the Commission without resigning any other office.

### **Allowances of members**

**78.** A member of the Commission, or a Division of the Commission, is to be paid such allowances (if any) as are prescribed.

### **Chairperson of Commission**

**79.(1)** Subject to subsection (3), if the President of the Court of Appeal is a member of the Commission, the President is to be the Chairperson of the Commission and each Division of the Commission.

**(2)** Subject to subsection (3), if the President of the Court of Appeal is not a member of the Commission, the senior Judge of Appeal who is a

member of the Commission is to be the Chairperson of the Commission and each Division of the Commission.

(3) The Chairperson of the Commission may resign as Chairperson and remain a member of the Commission.

### **Acting Chairperson**

**80.(1)** When—

- (a) the office of Chairperson of the Commission is vacant; or
- (b) the Chairperson is, for any reason, unable to discharge the office;

the next senior Judge of Appeal, who is a member of the Commission and willing, is to act as Chairperson.

(2) When the Chairperson is on leave or otherwise absent or is, for any other reason, unable to perform all of the ordinary functions of the Chairperson's office, the next senior Judge of Appeal, who is a member of the Commission and willing to act, is to perform the functions of the office that the Chairperson is unable to perform.

(3) While a Judge of Appeal is acting as Chairperson of the Commission—

- (a) the Judge of Appeal has all the powers and functions of the Chairperson; and
- (b) this Act and other Acts apply to the Judge of Appeal as if the Judge of Appeal were the Chairperson.

(4) While a Judge of Appeal is performing functions of the Chairperson's office, then, to the extent necessary to enable the Judge of Appeal to perform the functions—

- (a) the Judge of Appeal has all the powers and functions of the Chairperson; and
- (b) this Act and other Acts apply to the Judge of Appeal as if the Judge of Appeal were the Chairperson.

(5) Anything done by or in relation to the Judge of Appeal while the Judge of Appeal is purporting to act as Chairperson of the Commission is not invalid merely because the occasion for the Judge of Appeal to act had not arisen or had ceased.

**Divisions of Commission**

**81.(1)** The Chairperson of the Commission may divide the Commission into Divisions and may determine the members of the Commission and other persons who are to be members of each Division.

**(2)** Subject to the direction and control of the Chairperson of the Commission, each Division of the Commission may perform the functions and exercise the powers of the Commission.

**Responsibilities and powers of Chairperson**

**82.(1)** The Chairperson of the Commission is responsible for ensuring the effective, efficient and expeditious performance of the function and exercise of the powers of the Commission.

**(2)** Subject to this Act and to such consultation with the other members of the Commission as the Chairperson of the Commission considers appropriate and practical, the Chairperson of the Commission has power to do all things necessary and convenient to be done for ensuring the effective, efficient and expeditious performance of the function and exercise of the powers of the Commission, including, for example—

- (a) determining in what order, and at what times, matters are to be considered, and reports and recommendations are to be made, by the Commission; and
- (b) determining who is to be appointed as an additional member of the Commission, or a Division of the Commission, and for what period or purpose.

**(3)** The Chairperson of the Commission may select the staff of the Commission.

**(4)** The Chairperson of the Commission may, on behalf of the State, engage consultants for the purposes of the Commission on such terms and conditions as the Chairperson determines.

**Times and places of meetings**

**83.** Meetings of the Commission, and of each Division of the Commission, are to be held at such times and places as the Chairperson of the Commission determines.

**Presiding at meetings**

**84.(1)** The Chairperson of the Commission is to preside at all meetings at which the Chairperson is present.

(2) If the Chairperson is not present at a meeting, the senior Judge present is to preside.

**Quorum and voting at meetings**

**85.** At a meeting of the Commission or a Division of the Commission—

- (a) a question is to be decided by a majority of votes of the members present and voting; and
- (b) the member presiding has a deliberative vote and, if there is an equality of votes, also has a casting vote.

**Conduct of meetings**

**86.(1)** The Chairperson may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(2) A member who participates in a meeting under a permission under subsection (1) is taken to be present at the meeting.

(3) The Commission may invite a person to attend a meeting for the purpose of advising or informing it on any matter.

**Decisions without meetings**

**87.(1)** If a majority of members of the Commission, or a Division of the Commission, sign a document containing a statement that they are in favour of a decision in terms set out in the document, a decision in those terms is taken to have been made at a meeting of the Commission or Division, as the case may be, held on the day on which it is signed or, if the members do not sign on the same day, on the day on which the majority of members have signed the document.

(2) If a decision is, under subsection (1), taken to have been made at a meeting of the Commission or a Division of the Commission, each member must be advised of the matter and given a copy of the terms of the decision.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

### **Minutes**

**88.** The Commission and each Division of the Commission must keep a record of decisions made at its meetings.

### **Commission and Divisions may regulate their proceedings**

**89.** Subject to this Act, the Commission and the Divisions of the Commission may regulate their proceedings as they consider appropriate.

### **Obtaining information from units of public sector**

**90.(1)** The Commission or a Division of the Commission may, by written notice given to a unit of the public sector (within the meaning of the *Public Sector Management Commission Act 1990*), require the unit—

- (a) to give to it, within the time and in the way specified in the notice, information and reports on specified matters; and
- (b) to give to it, at the times and in the way specified in the notice, periodic reports on specified matters.

(2) For the purposes of subsection (1), a specified matter is a matter that—

- (a) relates to a matter or an aspect of a matter mentioned in section 75(1) (Function); or
- (b) in the Chairperson's opinion, may be relevant to such a matter or an aspect of such a matter.



**Premises and facilities of Commission**

**91.** The President of the Court of Appeal may permit the premises, facilities and equipment of the Court of Appeal to be used for the purposes of the Commission.

**Amounts appropriated for Commission**

**92.** There are payable for the purposes of the Commission such amounts as are appropriated by the Parliament.

**Estimates**

**93.(1)** Estimates of receipts and expenditure in relation to the Commission must be submitted to the Minister after they have been approved by the Chairperson of the Commission.

**(2)** The estimates are to be in a form approved, in writing, by the Minister.

**(3)** Unless the Governor in Council otherwise directs, only estimates of receipts and expenditure that supplement the estimates of the receipts and expenditure of the Court of Appeal need to be prepared and submitted in relation to the Commission.

**Staff of Commission**

**94.(1)** Subject to this Act, staff of the Commission are to be appointed or employed under the *Public Service Management and Employment Act 1988*.

**(2)** Unless the President of the Court of Appeal otherwise directs, all members of the staff of the Court of Appeal are also members of the staff of the Commission.

**(3)** The staff of the Commission (other than the associates of the Judges of Appeal) must perform their functions in relation to the Commission in accordance with any directions of the Chairperson of the Commission.

**(4)** The reference in subsection (3) to the Judges of Appeal does not include the President of the Court of Appeal.

**Proper accounts to be kept**

**95.(1)** Proper accounts and records relating to the operations of the Commission must be kept.

(2) All payments made out of amounts appropriated by the Parliament for the purposes of the Commission must be correctly made and properly authorised.

(3) Unless the Governor in Council otherwise directs, only accounts and records that supplement the accounts and records kept in relation to the administration of the Court of Appeal need to be kept for the purposes of the Commission.

**Audit**

**96.(1)** The Auditor-General must—

(a) inspect and audit the accounts and records of financial transactions relating to the operations of the Commission; and

(b) immediately draw the Chairperson's attention to any irregularity disclosed by the inspection and audit that, in the Auditor-General's opinion, is of sufficient importance to justify doing so.

(2) The Auditor-General may dispense with all or part of the detailed inspection and audit of any accounts and records mentioned in subsection (1)(a).

(3) The Auditor-General must report to the Chairperson of the Commission the results of each inspection and audit carried out under subsection (1)(a).

(4) An authorised auditor is entitled, at all reasonable times, to full and free access to all accounts, records and other documents maintained under this Part and relating directly or indirectly to the receipt or payment of amounts.

(5) An authorised auditor may make copies of, or take extracts from, any accounts, records or other documents mentioned in subsection (4).

**Minister to be kept informed**

**97.** The Minister must be given such reports and information relating to operations of the Commission as are required to keep the Minister properly informed.

**Annual report**

**98.(1)** As soon as practicable after the end of each financial year, but not later than 3 months after the end of the financial year, a written report of the operations of the Commission during the year must be prepared and given to the Minister, together with financial statements for the year and a copy of the Auditor-General's report under subsection (3) on the financial statements.

**(2)** The financial statements must be in a form approved by the Minister.

**(3)** Unless the Governor in Council otherwise directs, only financial statements that supplement the financial statements of the Court of Appeal need to be prepared and given to the Minister in relation to the Commission.

**(4)** Before the financial statements are submitted to the Minister, they must be submitted to the Auditor-General who must report to the Chairperson of the Commission—

(a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records; and

(b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and affairs relating to the Commission; and

(c) whether, in the Auditor-General's opinion, the receipt and expenditure of amounts, and the acquisition and disposal of assets, under this Part during the year have been in accordance with law; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

**(5)** The Minister must cause a copy of the report and financial statements, together with a copy of the Auditor-General's report, to be laid before the Legislative Assembly within 14 days after their receipt by the Minister.

**(6)** If, at the time the Minister would otherwise be required to lay a copy

of those documents before the Legislative Assembly, the Legislative Assembly is not sitting, the Minister must give a copy of the documents to the Clerk of the Parliament.

(7) The Clerk must cause a copy of the documents to be laid before the Legislative Assembly on its next sitting day.

(8) For the purposes of their printing and publication, the documents are taken to have been laid before the Legislative Assembly, and to have been ordered printed by the Legislative Assembly, when they are given to the Clerk.

### **Delegation of powers of Chairperson**

**99.** The Chairperson of the Commission may delegate all or any of the Chairperson's powers to—

- (a) any one or more of the members of the Commission; or
- (b) any one or more members of the staff of the Commission.

### **Proceedings in relation to administration of Commission**

**100.** A judicial or other proceeding relating to a matter arising out of this Part may be instituted by or against the State, as the case requires.

## **PART 8—TRANSITIONAL PROVISIONS**

### **Seniority of first Judges of Appeal**

**101.(1)** If all or some of the Judges of Appeal (other than the President of the Court of Appeal) appointed before 31 December 1991 consent to the application of this section to them before being sworn in, the Governor in Council may assign them equal seniority in relation to each other.

(2) For the purposes of the application of this Act in relation to a particular matter that is to be determined by seniority, the seniority of those Judges of Appeal in relation to each other is to be determined by agreement

between them or, failing agreement, by the President of the Court of Appeal.

### **Judicial entitlements of first Judges of Appeal**

**102.(1)** The Governor in Council is to determine, at or before the time of their appointment, the remuneration to be paid and provided in respect of the judicial service of the President of the Court of Appeal and the other Judges of Appeal.

(2) The rate of salary, and the allowances and the rate of allowances, payable to the President of the Court of Appeal and to the other Judges of Appeal on and after 1 July 1992 are to be fixed from time to time by determinations made by the Salaries and Allowances Tribunal under Part 6 of the *Judges (Salaries and Allowances) Act 1967*.

(3) In making its determinations, the Tribunal is to give effect to determinations of the Governor in Council under subsection (1).

(4) The remuneration in respect of the judicial service of the President of the Court of Appeal and the other Judges of Appeal determined in accordance with this section is to be paid and provided and is not to be reduced.

(5) Amounts payable in accordance with this section are payable out of the Consolidated Fund, which is appropriated accordingly.

(6) This section applies only to a Judge of Appeal appointed on or before 30 June 1992.

### **Part heard proceedings etc.**

**103.(1)** Subject to this Act, and unless the Court of Appeal otherwise orders, this Act does not apply to, and the repeals and amendments made by this Act do not affect, a proceeding heard, in whole or part, in the Full Court before the commencement of this section.

(2) Without limiting subsection (1), if a proceeding has been heard, in whole or part, in the Full Court before the commencement of this section, then, subject to this Act, and unless the Court of Appeal otherwise orders, this Act does not apply to, and the repeals and amendments made by this Act do not affect—

(a) the completion after the commencement of this section of any step in the proceeding taken before the commencement of this section; or

(b) the taking and completion after the commencement of this section of any step in the proceeding.

(3) The Court of Appeal may make orders under this section on application by a party or of its own motion.

(4) In this section—

“**judgment**” includes any rule, decree or order;

“**step**” includes—

(a) the entry or other perfecting of a judgment; and

(b) anything done or to be done in consequence of an appeal to the High Court;

whether before or after the final judgment.

### **Existing rules of court**

**104.(1)** Subject to subsection (2), rules of court, and other rules and orders for regulating the procedure, pleading, practice and other matters relating to the Court and other Queensland courts, in force under an Act or Imperial Act immediately before the commencement of this section continue to have effect as if this Act had not been enacted.

(2) Rules and orders mentioned in subsection (1) do not have effect so far as they are inconsistent with this Act or rules of court made under this Act.

### **Leave granted to appeal**

**105.(1)** Leave granted before the commencement of this section to appeal to the Full Court has effect, after that commencement, as if it were leave granted to appeal to the Court of Appeal.

(2) Without limiting subsection (1), leave granted under section 92(2) of the *District Courts Act 1967* before the commencement of this section has effect, after that commencement, as if it were leave granted under that

section as amended by this Act.

(3) This section does not apply to a proceeding to which section 103 (Part heard proceedings etc.) applies.

### **Previous appointments of acting Judges**

**106.(1)** For the avoidance of doubt, it is declared that the appointment of a person to act as a Judge before the commencement of this section is not invalid merely because the occasion or circumstances for the making of the appointment had not arisen, did not exist or had ceased.

(2) Without limiting subsection (1), anything done by or in relation to a person mentioned in that subsection is not invalid merely because the occasion or circumstances for the making of the appointment had not arisen, did not exist or had ceased.

### **Court may resolve difficulties**

**107.(1)** If a difficulty arises in—

- (a) the application of this Act to a particular matter; or
- (b) the application, to a particular matter, of another Act because of the operation of this Act;

the Court of Appeal or the Court in the Trial Division may, on application by a party or of its own motion, make such order as it considers proper to resolve the difficulty.

(2) An order made under subsection (1) has effect despite anything contained in this Act or another Act in force immediately before the commencement of this section.

## **PART 9—MISCELLANEOUS**

### **Order etc. on terms**

**108.** The Court may make an order, give a direction or leave or do

anything else that it is authorised to do on such terms and conditions (if any) as the Court considers appropriate.

### **Regulations**

**109.** The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **PART 10—REPEALS AND AMENDMENTS**

### **Repeal of Acts**

**110.** The Acts specified in Schedule 1 are repealed.

### **Amendment of Acts**

**111.** The Acts specified in Schedule 2 are amended as set out in that Schedule.



**SCHEDULE 1**

section 110

**REPEALED ACTS***Acting Judges Act 1873**Judges' Pensions Acts Amendment Act 1968**Judges' Retirement Act 1921**Supreme Court Act 1889**Supreme Court Act 1892, No. 2**Supreme Court Acts Amendment Act 1903**Supreme Court Acts Amendment Act 1944**Supreme Court Acts Amendment Act 1946**Supreme Court Acts Amendment Act 1949**Supreme Court Acts Amendment Act 1952**Supreme Court Acts Amendment Act 1955 (No. 2)**Supreme Court Acts Amendment Act 1960**Supreme Court Acts Amendment Act 1961**Supreme Court Acts Amendment Act 1965**Supreme Court Acts Amendment Act 1975**Supreme Court Acts Amendment Act 1982**Supreme Court Acts Amendment (Rules Ratification) Act 1928*

**SCHEDULE 2**

section 111

**CONSEQUENTIAL AND OTHER AMENDMENTS***Acts Interpretation Act 1954***Section 36 (definition “Court of Criminal Appeal”)—***omit.***Section 51—***omit* ‘(or in the case of a vacancy in such office then the senior Puisne Judge)’.*Appeal Costs Fund Act 1973***Section 22A—***omit* ‘Court of Criminal Appeal’ (wherever occurring),  
*insert* ‘Court of Appeal’.*Commercial Causes Act 1910***Section 4(4)(j)—***omit* ‘Full Court’, *insert* ‘Court of Appeal’.**Section 8—***omit.*

*The Criminal Code***Section 668 (definition “Court”)—**

*omit, insert—*

‘**“Court”** means the Court of Appeal;’.

**Section 668A—**

*omit.*

*District Courts Act 1967***Section 2—**

*omit.*

**Section 3(1), (2) and (4)—**

*omit.*

**After section 12—**

*insert—*

**‘Retirement of Judges**

‘**12A.(1)** A Judge must retire on reaching 70 years of age.

‘**(2)** Despite subsection (1), a Judge who, before attaining 70 years of age, starts the hearing of a proceeding remains a Judge for the purposes of finishing the proceeding.

‘**(3)** Subsection (2) does not prevent the filling of the Judge’s office from any time after the Judge attains 70 years of age and, for that purpose, the Judge’s office is taken to be vacant from that time.’.

**Section 14 (last sentence)—**

*omit.*

**Section 15—**

*omit.*

**Heading before section 92—**

*omit ‘Supreme Court’, insert ‘Court of Appeal’.*

**Section 92 (Heading)—**

*omit ‘Supreme Court’, insert ‘Court of Appeal’.*

**Section 92(1)—**

*omit ‘Full Court of the Supreme Court’, insert ‘Court of Appeal’.*

**Section 92(2)—**

*omit ‘Supreme Court or a Judge thereof appeal to the Full Court of the Supreme Court’,*

*insert ‘Court of Appeal or a Judge of Appeal appeal to the Court of Appeal’.*

**Section 92(2)—**

*omit ‘Supreme Court or a Judge thereof’,*

*insert ‘Court of Appeal or a Judge of Appeal’.*

**Section 92(3)—**

*omit ‘Supreme Court’, insert ‘Court of Appeal’.*

**Section 92(3)(c)—**

*omit* ‘Full Court of the Supreme Court’, *insert* ‘Court of Appeal’.

**Section 93 (Heading)—**

*omit* ‘Supreme Court’, *insert* ‘Court of Appeal’.

**Section 93(1)—**

*omit* ‘Supreme Court’, *insert* ‘Court of Appeal’.

**Section 93(2)—**

*omit* ‘Supreme Court’ (wherever occurring), *insert* ‘Court of Appeal’.

***Equity Act 1867*****Section 1—**

*omit* ‘the court holden before two or more of the judges thereof’,  
*insert* ‘the Court of Appeal’.

***Industrial Relations Act 1990*****Section 9.1(1)—**

*omit* ‘Supreme Court sitting as a Full Court’,  
*insert* ‘Court of Appeal’.

***Judges’ Pensions Act 1957*****Section 1—**

*omit, insert—*

**‘1.** This Act may be cited as the *Judges (Pensions and Long Leave) Act 1957.*’.

## **Section 2—**

*omit, insert—*

### **‘Definitions**

**‘2.** In this Act—

**“Judge”** means—

- (a) a Supreme Court Judge; or
- (b) a District Court Judge;

**“salary”**, in relation to a Judge who has died or retired, means the annual rate of salary that would be payable to the Judge if the Judge had not died or retired, and includes, except in the case of a Judge who died or retired before the enactment of the *Judges Pensions Act Amendment Act 1984*, the rate of any annual allowance payable to the Judge immediately before the death or retirement.

### **‘Length of service**

**‘2A.** For the purposes of this Act, in determining the length of service as a Judge, service as an acting Supreme Court Judge or acting District Court Judge is to be counted as service as a Judge.’.

## **Section 3—**

*omit* ‘in accordance with the provisions of *The Judges’ Retirement Act of 1921*’,

*insert* ‘on attaining 70 years of age’.

## **Section 4—**

*omit* ‘who has attained the age of sixty years retires from office (otherwise than in accordance with the provisions of “*The Judges*’

*Retirement Act of 1921,*” or by reason of’,

*insert* ‘who has attained 60 years of age, but has not attained 70 years of age, retires from office (otherwise than because’.

**Sections 11 to 14—**

*omit.*

**Section 15(1)—**

*omit* all the words before ‘entitled’,

*insert* ‘A Judge is’.

**Section 15—**

*omit* ‘, notwithstanding that part of his service as a Judge was prior to the passing of “*The Judges’ Salaries and Pensions Act of 1967,*”’.

**Section 15(1) (first proviso)—**

*omit* all the words before ‘take’ (first occurring),

*insert* ‘Provided that a Judge must, within 3 years after completing any 7 years of service in office,’.

**Section 15(2)—**

*omit, insert—*

‘(2) If circumstances render it inconvenient for a Judge to take leave of absence to which the Judge is entitled, the Judge is entitled to receive, either during service as a Judge or on retirement, an amount equal to the Judge’s salary for the period of the leave.

‘(3) If a Judge dies before taking a period of leave of absence to which the Judge is entitled, an amount equal to the Judge’s salary for the period of the leave is payable to the executor or administrator of the Judge’s estate.’.

**Section 16—**

*omit, insert—*

**‘Act subject to Supreme Court of Queensland Act**

**‘16.** This Act has effect subject to the *Supreme Court of Queensland Act 1991*.’.

***Judges’ Salaries and Pensions Act 1967*****Section 1—**

*omit, insert—*

**‘Short title**

**‘1.** This Act may be cited as the *Judges (Salaries and Allowances) Act 1967*.’.

**Sections 2 and 2A—**

*omit.*

**Part II—**

*omit, insert—*

**‘PART 2—SALARIES AND ALLOWANCES OF  
SUPREME COURT JUDGES****‘Rates of salary and allowances of Judges**

**‘2.** Subject to the *Supreme Court of Queensland Act 1991*, the rate of salary, and the allowances and rates of allowances, payable to the Chief Justice, President of the Court of Appeal, other Judges of Appeal, Senior Judge Administrator, Senior Judges and other Judges of the Supreme Court



are those respectively fixed from time to time by determinations made by the Tribunal under Part 6.’.

**Part III—**

*omit, insert—*

**‘PART 3—SALARIES AND ALLOWANCES OF  
DISTRICT COURT JUDGES**

‘3. The rate of salary, and the allowances and rates of allowances, payable to the Chairperson, and a Deputy Chairperson, of the District Courts and other District Court Judges are those respectively fixed from time to time by determinations made by the Tribunal under Part 6.’.

**Part V—**

*omit.*

**Section 20(3)(d)—**

*omit ‘Industrial Conciliation and Arbitration Act 1961-1976’,  
insert ‘Industrial Relations Act 1990’.*

**Sections 27 and 28—**

*omit, insert—*

**‘Inquiry and report on judicial salaries and allowances**

‘27.(1) The Tribunal must inquire into, and, at intervals of not more than one year, report to the Minister the changes (if any) that should be made to—

- (a) the rates of salary, and the allowances and rates of allowances, respectively payable to the Chief Justice, President of the Court of Appeal, other Judges of Appeal, Senior Judge Administrator, Senior

Judges and other Judges of the Supreme Court; and

(b) the rates of salary, and the allowances and rates of allowances, respectively payable to the Chairperson, and a Deputy Chairperson, of the District Courts and other District Court Judges.

‘(2) The report of the Tribunal must be—

- (a) in writing; and
- (b) signed by the members of the Tribunal; and
- (c) given to the Minister.

‘(3) If the Tribunal decides that changes should be made to judicial salaries and allowances, the Tribunal must, in the report, determine the salaries and allowances that should be paid.

‘(4) Section 28A of the *Acts Interpretation Act 1954* applies to the determination as if the determination were a regulation.

‘(5) When a copy of the determination is laid before the Legislative Assembly under subsection (4), a copy of the report is also to be laid before the Legislative Assembly.’.

**Section 29(2)—**

*omit* all the words before ‘equitable’,

*insert* ‘The Tribunal must not decide that changes should be made to the salaries and allowances of a Judge unless it considers that the changes are’.

**Section 29(2)—**

*omit* ‘internal Territories of the Commonwealth’,

*insert* ‘the Territories’.

**After section 30—**

*insert—*

**‘Act subject to Supreme Court of Queensland Act**

**‘31.** This Act has effect subject to the *Supreme Court of Queensland Act 1991*.

**‘Regulations**

**‘32.** The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.’.

**Judicature Act****Section 6 (proviso)—**

*omit* ‘full Court’,  
*insert* ‘Court of Appeal’.

**Section 7 (heading)—**

*omit* ‘full court’,  
*insert* ‘Court of Appeal’.

**Section 7—**

*omit* ‘any judge of the said Court sitting in the exercise of its jurisdiction elsewhere than in the full Court’,

*insert* ‘, a Judge of the Supreme Court sitting in the Trial Division’.

**Section 7—**

*omit* ‘full Court’ (second and last occurring),  
*insert* ‘Court of Appeal’.

**Section 8 (heading)—**

*omit* ‘full Court’,

*insert* ‘Court of Appeal’.

**Section 8—**

*omit* ‘full Court’,

*insert* ‘Court of Appeal’.

**Section 10—**

*omit* ‘full Court’,

*insert* ‘Court of Appeal’.

***Justices Act 1886*****Section 209(2)—**

*omit* ‘Supreme Court sitting as the Full Court or before a’,

*insert* ‘Court of Appeal or a Supreme Court’.

**Section 209(3)—**

*omit* ‘the Supreme Court sitting as the Full Court’ (wherever occurring),

*insert* ‘the Court of Appeal’.

**Section 209(3)—**

*omit* ‘Full Court’ (third and fourth occurring),

*insert* ‘Court of Appeal’.

**Section 209(4)—**

*omit* ‘Full Court’ (wherever occurring),

*insert* ‘Court of Appeal’.

**Section 210—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 212(2)—**

*omit* ‘Supreme Court sitting as the Full Court’,  
*insert* ‘Court of Appeal’.

***Land Act 1962***

**Section 5 (definition “Full Court”)—**

*omit*.

**Section 45—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 45A—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 45C—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 45D—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 46(2)—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 46(2)—**

*omit* ‘Supreme Court or a Judge thereof’,  
*insert* ‘Court of Appeal’.

**Section 47—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

**Section 48—**

*omit* ‘Full Court’ (wherever occurring), *insert* ‘Court of Appeal’.

***Mineral Resources Act 1990*****Section 10.30(3)(ii)—**

*omit* ‘Full Court of the Supreme Court’,  
*insert* ‘Court of Appeal’.

**Section 10.30(3)—**

*omit* ‘Full Court’ (second and last occurring),  
*insert* ‘Court of Appeal’.

***Supreme Court Act 1867*****Heading before section 1—**

*omit.*

**Sections 1 and 2—**

*omit.*

**Section 3 (Heading)—**

*omit* all words after ‘seals’.

**Section 3—**

*omit* ‘said’.

**Section 3—**

*omit* all words after ‘thereof’ (first occurring).

**Section 8 (first and second provisos)—**

*omit.*

**Section 12—**

*omit.*

**Section 16—**

*omit.*

**Section 16A—**

*omit.*

**Section 17—**

*omit* all words after ‘Chief Justice’.

**Section 18—**

*omit.*

**Heading before section 38—**

*omit.*

**Section 38—**

*omit.*

**Section 39—**

*omit* ‘to the judge or judges for the time being of the said court shall’.

**Section 39—**

*omit* ‘in Her Majesty’s name and under the great seal of the colony’.

**Section 39—**

*omit* from ‘appointed by the Governor’ to ‘is necessary’,  
*insert* ‘appointed by the Governor in Council’.

**Section 39 (proviso)—**

*omit.*

**Section 39A(11)(b)(ii)—**

*omit* ‘Full Court of the Supreme Court’, *insert* ‘Court of Appeal’.

***Supreme Court Act 1874*****Section 12—**

*omit.*



**Supreme Court Act 1892****Section 2—**

*omit, insert—*

**‘Interpretation**

**‘2. In this Act—**

**“Court” means the Supreme Court.’.**

**Section 3—**

*omit.*

**Section 4—**

*omit.*

**Section 5—**

*omit.*

**Section 6—**

*omit.*

**Section 7—**

*omit.*

**Section 9—**

*omit ‘, subject to appeal to the Full Court,’ and ‘, subject to such appeal as aforesaid,’.*

**Section 11—***omit.***Section 12—***omit.***Section 13—***omit.***Section 14—***omit.****Supreme Court Act 1893*****Section 8—***omit.****Supreme Court Act 1895*****Section 2 (definition “The Full Court”)—***omit.***Section 13—***omit.*

***Supreme Court Act 1921*****Section 3—**

*omit.*

**Heading before section 4—**

*omit.*

**Section 4—**

*omit.*

**Section 5—**

*omit.*

**Section 7 (fifth sentence)—**

*omit.*

***Supreme Court Acts Amendment Act 1958 (No. 2)*****Section 1—**

*omit, insert—*

**‘Short title etc.**

‘**1.(1)** This Act may be cited as the *Supreme Court Amendment Act (No. 2) 1958*.

‘**(2)** This Act is to be read as one with the *Supreme Court Acts 1861-1921*.

‘**(3)** The *Supreme Court Acts 1861-1921* and this Act may be collectively cited as the *Supreme Court Acts 1861-1958*.’.

**Section 2—**

*omit.*

**Section 4—**

*omit.*

***Supreme Court Judges Appointment Act 1983*****Section 8—**

*omit, insert—*

**‘Collective title of Supreme Court Acts**

**‘8.** The *Supreme Court Acts 1861-1958* and this Act may be collectively cited as the *Supreme Court Acts 1861-1983.*’.